

**STATEMENT OF DEL R. BRYANT**  
**PRESIDENT AND CHIEF EXECUTIVE OFFICER**  
**BROADCAST MUSIC, INC.**

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee on the occasion of congressional oversight of the three U.S. music performing right licensing organizations. I would also like to thank the Ranking Minority Member and the other members of the Subcommittee.<sup>1</sup>

My name is Del Bryant. I am President and Chief Executive Officer of BMI, one of the world's leading performing right organizations. Mr. Chairman, America's copyright laws have provided a firm foundation to support a vibrant creative community of songwriters and composers whose works fuel a robust and growing entertainment industry. BMI is proud to represent the public performing rights of over 300,000 songwriters, composers and music publishers, more than any other performing right licensing organization. BMI also represents the works of thousands of foreign composers and songwriters when those works are publicly performed in the United States. Our core competency is as a trusted third party in licensing the public performing right of these musical creators and copyright owners. To be successful in this mission, we have developed an understanding of and appreciation for the business models and programming needs of the hundreds of thousands of businesses across our nation who bring our creators' music to the public.

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<sup>1</sup> Neither I nor BMI have received any funds, grants, contracts (or subcontracts) from any federal agency or proceeding of any kind during this fiscal year or the preceding two fiscal years that would have any relevancy to this hearing or my testimony.

We must be, if you will, a trusted bridge between the musical creator and copyright owner on the one hand and the businesses using music on the other. Our operations are efficient, fair and transparent, and our royalty distributions are accurate and timely. The competition among American performing right organizations provides benefits to creators and music users alike. . . a win-win success story for the American enterprise system. We maintain a sensitivity to the creative process, identifying and supporting musical creation in all its varieties. At the same time, we assist our licensees by offering customized licensing solutions that permit them to focus on their businesses.

BMI oversees a repertoire of more than 6.5 million musical works. BMI's repertoire includes outstanding creators in every style of musical composition: from pop songwriters to film and television composers; from country music to gospel; from classical composers to commercial jingle writers; from library music to musical theatre composers; from jazz to hip hop; from metal to meringue; classical to soul; rock to reggae; and all categories in between.

As you know, BMI, ASCAP and SESAC enjoy statutory recognition in the Copyright Act. A "performing rights society" is defined as "an association, corporation, or other entity that licenses the public performance of non-dramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc." 17 U.S.C. § 101. For more than six decades, BMI has worked with the House and Senate Judiciary Committees to promote the efficacy and fairness of this Nation's copyright law. BMI recognizes the importance of oversight in ensuring the effectiveness of our laws and their administration.

Specifically, BMI's role is to license one of the six exclusive copyright rights, the right to perform publicly musical works on radio, television, cable, satellite and the Internet as well as at

concerts, sports venues, restaurants, hotels, retail stores and universities, to name a few of the many categories of BMI licensees. BMI licenses its music literally wherever music is heard or communicated to the public. Although BMI, ASCAP and SESAC share certain similarities, there are important differences. Moreover, while the organizations are allies on legislation which protects copyright, we are also competitors in the marketplace. It is widely acknowledged that competition between performing right organizations provides an important incentive for efficiency and innovation in this sector delivering benefits to music creators and users alike. My testimony will describe BMI's history and mission, and briefly highlight some recent successes.

### **BMI's History**

BMI's history gives it a unique and well-rounded perspective on the role of a performing right organization as a bridge between creators of music and the businesses that use and transmit that music to the American public. Created by the broadcasting industry in 1939 to provide a competitive source of music licensing, BMI threw its doors open wide to representation of genres of American music that were not, at the time, generally available for licensing. BMI's "open door" policy opened a floodgate of music from folk and country to rhythm and blues, to gospel, to bluegrass, to jazz ... the true roots of music of America. This explosion of musical creativity benefited the burgeoning entertainment business of the 1940s, bringing vast new audiences to broadcasters, record companies and live music performances.

Here's how legendary Atlantic Records producer Jerry Wexler tells the story:

"The lid was kept on Rhythm-and-Blues music, Country music, ethnic music, folk. Once the lid was lifted – which happened when BMI entered the picture – the vacuum was filled by all these archetypal musics. BMI turned out to be the mechanism that released all those primal American forms of music that fused and became Rock-and-Roll."

BMI protected the rights of minority songwriters and publishers in many cases providing funds essential for their survival. In the words of legendary Motown composer Lamont Dozier:

“...all of my life I have worked at being a songwriter, and ever since I was able to get my family and myself out of the Jeffrey Projects in Detroit, Michigan, at the age of 16 years old, I have been writing songs and making a living writing songs. Performance income is now the only living that I do earn.... If it weren't for BMI and performance income, my family would be destitute. We are not receiving any income from mechanicals or sales, as one would call it, only air play.” Letter from Lamont Dozier to Hon. John Conyers, Jr. (Sept. 28, 2001).

Thanks to that “Open Door” policy, it is not surprising that many of these seminal songwriter/artists have chosen BMI to represent their works. The list includes 69% of the inductees into the Rock 'n Roll Hall of Fame, 87% of the Country Music Hall of Fame, 76% of the Bluegrass Hall of Fame, 87% of the Rhythm & Blues Foundation Pioneers and 94% of the Blues Hall of Fame. The BMI family includes true icons of American music and today's most successful songwriters and composers: from Hank Williams to Toby Keith; Billie Holliday to Norah Jones; Elvis to Kid Rock; Patsy Cline to Shania Twain; Santana to Gloria Estefan; the Beach Boys and the Eagles to Maroon 5 and 3 Doors Down; Bill Monroe to Alison Krauss; Ray Charles to Jamie Foxx; Miles, Mingus and Monk to Herbie Hancock; John Williams to Danny Elfman; and from classical music legend Charles Ives to the Pulitzer-winning John Adams – and that just scratches the surface.

When you think of BMI's affiliates, we ask that you not think only of these superstars, however. The typical songwriter does not receive income from recording his or her own songs, nor does he or she receive income from performing at concerts, television appearances, appearing in commercials, the sale of souvenirs, T-shirts, and so forth. The typical songwriter is a small businessperson, working out of a home studio, often borrowing money when necessary,

sometimes working two jobs. The typical songwriter receives a modest income stream for his or her creative efforts of writing music that is publicly performed by others. You may not know their names; but you see them in the supermarket pushing a grocery cart or on the soccer field with their kids. They may be your neighbors. When you consider BMI and the music industry, please think of these songwriters and composers.

### **BMI's Mission**

To successfully perform our role as a trusted bridge between the music creators and music users, BMI's mission includes: (1) to distribute performing right royalties to songwriters, composers and music publishers on an accurate and timely basis; (2) to provide the business and broadcast communities with legal access to publicly perform a music catalog of unique and lasting value which includes all genres of music; (3) to educate the public about the importance of copyright to culture and to protect the copyright rights of BMI's affiliates; and (4) identification of the next generation of musical talent and fostering of songwriting careers.

BMI operates on a non-profit making basis. BMI collects license fees from businesses that perform music. After deducting its overhead, it distributes the license fees collected to its affiliated songwriters and music publishers. BMI strives for ever greater efficiency, and last year distributed more than 85 cents in royalties from every dollar collected while assuring that we continue to support the important work of developing new careers and protecting copyright.

Since its inception, BMI has played an active role in the evolution of U.S. Copyright Law. Domestically, BMI has always worked closely with the leadership of this Subcommittee, and with the Copyright Office. Internationally, BMI contributed to the process of joining the Berne Convention in 1988, as well as the negotiation and ratification of the recent WIPO Copyright Treaties. In the digital era, copyright enforcement not only depends on the law, but

also relies on an informed citizenry to respect property rights of owners and authors, increasingly the intangible property of copyright. In this regard, BMI works with a wide variety of organizations representing the creative community and music licensees to help create a greater understanding of the public performing right in copyright and to help foster an environment of copyright protection. For example, we collaborate with organizations representing the creative community, including: the Recording Academy; the Television Academy; Motion Picture Association of America; Recording Industry Association of America; Songwriters Guild of America; Nashville Songwriters Association International; Songwriters Hall of Fame; National Music Publishers' Association; and the official associations representing Country, Gospel, Blues and Bluegrass Music. We also work with a host of organizations representing those who bring the music to the public, including: National Association of Broadcasters; Radio Advertising Bureau; National Association of Black Owned Broadcasters; American Hotel and Lodging Association; North American Concert Promoters Association; Broadcast Cable Financial Management Association; and National Restaurant Association. In addition, we work with educators through organizations such as the American Council on Education and the National Association for Music Education.

Mr. Chairman, America's music is one of its most important exports, annually bringing in almost \$400 million in performing right royalties to U.S. songwriters, composers and copyright owners from overseas. BMI's repertoire has enjoyed explosive growth overseas during the last 15 years with international royalties increasing well over 300% since 1990.

BMI is now one of the largest copyright organizations in the world as measured by performing right revenue. BMI plays an extremely active role in the international copyright

arena, serving on many committees and in leadership capacities in CISAC, the international confederation of societies of authors and composers.

The BMI Foundation, Inc., a not-for-profit corporation founded by BMI in 1985, is devoted to encouraging the creation, performance and study of music through awards, scholarships, internships and grants. In the spirit of “giving back,” support for the Foundation comes primarily from BMI-affiliated songwriters, composers and publishers, BMI employees and members of the public with a special interest in music.

### **Career Building**

To support its mission, BMI plays a prominent role in the discovery of new musical talent and the fostering of careers for the next generation of songwriters in all genres of music. We produce over 100 new talent showcases in more than two dozen cities across the nation to introduce promising new songwriter/artists to the industry and to new audiences. For example, we were a co-founder of the South By Southwest Music Festival in Austin, Texas in 1987, and continue to be an anchor sponsor of this event, which now draws more than 10,000 music professionals each year. Likewise, BMI sponsors dozens of showcases at regional music industry events nationwide.

Career development is a top priority at BMI which annually sponsors competitions for the best new musical compositions in the field of classical music – eleven winners of this contest have gone on to win the Pulitzer Prize; popular music with the John Lennon Scholarship Contest; jazz with the Charlie Parker Prize; and other coveted prizes for jazz composers and musical theater composers and lyricists. BMI also provides some of the industry’s most sought after professional workshops for composers in film and television music, jazz, and musical theater.

Legendary songwriter/composer Isaac Hayes said this of the unique role that BMI plays in the creative community: “It is very important to have someone who is strong and has good ethics. BMI exemplifies all of that. They’ve been fighting my battles for years and years.” Speaking of BMI’s support for classical music, Pulitzer Prize winner John Adams said, “The support of BMI has been absolutely essential for me. American classical music is . . . a great tradition. It is high art, representing what is best about our culture. BMI, as a champion of American composers, understands this and continues to do the right thing to make the tradition persevere.”

BMI also engages in many educational activities, both within the field of music as well as the copyright law itself, and each year BMI executives make many appearances at schools and universities, on industry panels and legal seminars in an effort to educate the public about the music industry and the importance of copyright.

### **Technology Leadership by BMI**

BMI is a worldwide leader in technology and innovation. BMI was the first entertainment industry organization to launch a website in September 1994, at a time when there were only a handful of websites, mostly run by governmental entities or institutions of higher education. BMI.com® now serves more than 10,000,000 visitors each year on a network of 20 different sites, encompassing over 10,000 web pages.

BMI has entered into global agreements and initiatives that have streamlined the collective administration of the performing right. For example, BMI was one of five original founding members of FastTrack™, an international technical alliance, which delivers unprecedented efficiency as BMI processes millions of international copyright transactions each year on behalf of its songwriters, composers and publishers. On other fronts, through technology



partnerships with MediaBase, Nielsen BDS, Shazam, and many others, BMI is breaking new ground in identifying performances of music in a fast and efficient manner.

### **BMI's Consent Decree**

While BMI and ASCAP now have consent decrees that have similar licensing provisions, BMI's history is different from ASCAP's. Shortly after BMI was formed in 1939, the Justice Department started a proceeding against ASCAP. To terminate that case, ASCAP agreed to enter into a consent decree in 1941. But the DOJ desired to have a "level playing field" between BMI and ASCAP. And so, even though BMI was only a fledgling organization at the time, BMI also agreed to enter into a consent decree with the Department of Justice in 1941. Like ASCAP, BMI has agreed to license rights on a non-exclusive basis and to avoid discrimination in licensing, and these provisions are reflected in BMI's current decree, which was entered in 1966. Further, BMI is required to offer broadcasters per-program licenses that allow broadcasters to pay fees only for programs containing BMI music. BMI's consent decree prohibits discrimination between users who are "similarly situated".

BMI's consent decree also contains two provisions aimed at resolving license fee disputes. The first is an automatic license provision, which permits any user of BMI music to apply for a license by sending BMI a request for a license in writing and become immediately licensed. The second is a provision designating a specific federal district court to serve as a "rate court" to resolve license fee disputes. Unlike ASCAP, until 1994 BMI did not have an automatic license provision in its consent decree or a provision allowing parties to adjudicate license fee disputes. This situation changed when an amendment establishing BMI's own separate rate court was agreed to with the Department of Justice and approved by the court in that year.

While BMI historically attempted to negotiate fair and reasonable rates in the marketplace with users, certain large music-using industries urged that BMI seek its own rate court to provide a neutral forum for them to bring any potential rate disputes and to eliminate the threat of infringement liability. For its part, BMI often felt disadvantaged in the marketplace compared to ASCAP by the fact that BMI did not have a legal mechanism to resolve rate disputes. The existence of the ASCAP rate court had ensured that ASCAP would continue to be paid license fee payments through court-set interim fees pending the outcome of negotiations over final fees and terms, while BMI did not have an interim fee mechanism.

In over ten years since the 1994 amendment of BMI's consent decree, only a handful of rate proceedings have been commenced, and only one of them has gone to trial. BMI continues to meet the needs of the market and BMI is striving to negotiate, rather than litigate, fee disputes. However, in those instances where the parties have been unable to negotiate license fees, the rate court proved to be a valuable asset to BMI and its customers.

### **BMI's Licensing Practices**

BMI has always attempted to work closely with users of music to create licensing models that work for both the users of music and songwriters, composers and music publishers. In recent years BMI redoubled its efforts to address concerns of the restaurant industry in the Fairness in Music Licensing Act of 1998 by entering into negotiations with numerous state restaurant, tavern, and licensed beverage associations so that mutually acceptable license structures and license fees could be developed. These negotiations proved to be well received by licensees. The BMI/Association agreements include 41 state restaurant associations and 10 licensed beverage associations. It should be noted that just last year BMI received the "Restaurant Supplier of the Year" award from the Alabama Restaurant Association.

BMI's licensing program has been a success for both BMI and the associations since its inception, giving each side the opportunity to work with the other on issues affecting both sides. BMI has worked diligently to maintain a cooperative business relationship with these associations. The program has resulted in a better understanding of each other's contributions to the U.S. economy as well as a lessening of misunderstandings between those businesses using music and BMI.

BMI has made several other initiatives aimed at improving its service to licensees, including:

- In response to requests from various groups, BMI placed a comprehensive list of the songwriters, composers and publishers of BMI's repertoire of songs, including film and television themes scores, on the Internet in order to give users of music immediate knowledge of and access to information about the BMI repertoire. BMI was also the first to offer data on its repertoire on CD-ROM.
- Early on BMI entered into Internet licensing agreements with users of music on the Internet. BMI was the first to offer on-line licensing for Internet users of music via BMI's *Digital Licensing Center*. This "Klik-Thru" license is aimed at smaller Internet users and is structured to afford the music user the opportunity to obtain a license quickly and easily in an on-line environment.
- BMI offers *Radio Select* and *TV Select* to the broadcast radio and broadcast television industries. *Radio Select* was developed in concert with the National Religious Broadcasters Music License Committee. The free software offered by BMI enables those radio and television stations on per program licenses to save money and time in reporting their music use.

### **Comparison to SESAC**

BMI operates as a non-profit making organization, and ASCAP is a non-profit making association, while SESAC operates for the profit of its private owners. As previously mentioned, BMI and ASCAP also have consent decrees which regulate their relations with licensees and require non-discriminatory treatment. SESAC does not have any similar licensing requirements.

Additionally the BMI and ASCAP consent decrees govern their relationships with their respective songwriters, composers and publishers. No comparable regulations apply to SESAC.

### **Conclusion**

Mr. Chairman, thank you for the opportunity to tell the BMI story. In a challenging period for the music industry, BMI remains a bulwark of support for songwriters, composers and publishers, and an ever more valuable supplier of essential rights to music users. Our thousands of affiliates are being accurately and quickly compensated for the public performance of their musical works. We offer our licensees non-exclusive collective licenses for millions of copyrighted works. BMI serves both creators and music users by finding solutions that facilitate the use of copyrights, at reasonable and competitive prices, while growing the world's most vibrant and diverse musical catalog for our licensees and their audiences. Increasingly, our licensing model is being copied and touted by rights-clearance and royalty-payment systems beyond the public performing right in musical works. We continue to be a leader in the use of technology to identify performances of music and collect and distribute royalties.

We have a huge job with huge responsibilities. BMI does its job in an exemplary fashion. The BMI Consent Decree is doing the job it is supposed to do ... that is, afford a BMI license to those music users that want a BMI license, and afford a relief valve in the event the music user and BMI cannot agree to license fees/terms. In fact, as stated above, in those few instances where rate proceedings were commenced only one has proceeded to trial.

Mr. Chairman, we are grateful to you and the Subcommittee Members for the effectiveness of the Copyright Act, which permits BMI to function, and songwriters, composers and publishers to be compensated. Thank you for your leadership on these issues which affect the livelihoods of those we represent.